NO. 83-859

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES R. CARNEY,

Respondent.

REPLY BRIEF

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ARGUMENT

I

THE CALIFORNIA SUPREME COURT'S REVERSAL RESTED SOLELY ON THE FEDERAL CONSTITUTION

In People v. Carney (1983) 34 Cal.3d 597 [194 Cal.Rptr. 500; 668 P.2d 807], the California Supreme Court held:

> "Accordingly, we conclude that a motor home is fully protected by the Fourth Amendment and is

> not subject to the 'automobile exception.' Of course this does not preclude all warrantless searches of motor homes: it simply means that such searches cannot be justified by that particular exception to the warrant requirement. We therefore proceed to inquire into the remaining justification for the search offered by the People." (Id., at p. 610, emphasis added.)

Contrary to respondent's contention, no independent state ground appears as the basis for the California Court's reversal. (Respondent's Brief on the Merits, pp. 1-15.) Had the California Supreme Court intended to base their reversal on state grounds they would have explicitly done so. (Compare, People v. Superior Court (Valdez) (1983) 35 Cal.3d 11, 15-16 [196 Cal.Rptr. 359; 671 P.2d 863]; People v. Chavers (1983) 33 Cal.3d 462, 466-469 [189 Cal.Rptr. 169; 658 P.2d 96];

People v. Minjares (1979) 24 Cal.3d 410, 424 [153 Cal.Rptr. 224; 591 P.2d 514].) Consequently, there is no bar to this Court considering the issues raised in this petition. (California v. Ramos (1983) ____ U.S. _____ [77 L.Ed.2d 1171, 117], fn. 7; Michigan v. Long (1983) _____ U.S. _____ 77 L.Ed.2d 1201, 1214.)

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II

A VEHICLE EXCEPTION BASED ON INHERENT MOBILITY FULFILLS THE INCONTROVERTIBLE NECESSITY FOR A "BRIGHT LINE" APPROACH TO VEHICLE SEARCH CASES AND ENSURES THE PROTECTION OF INDIVIDUAL PRIVACY RIGHTS, SOCIETY'S RIGHT TO EFFECTIVE LAW ENFORCEMENT AND THE LAW ENFORCEMENT OFFICER'S RIGHT TO SAFETY

As argued in detail in petitioner's brief on the merits, for the constitutional protections granted by the Fourth and Fourteenth Amendments to remain vital a "bright line" vehicle search rule must be articulated in this case. (See, Oliver v. United States (1984) ____ U.S. _____, 80 L.Ed.2d 214, 226.)

The Fourth Amendment's requirement of reasonableness envisions a common sense approach to search and seizure law. Even if attainable, a "perfect rule" shimmering in intellectual purity, but incapable of application in the field

without the wisdom of Solomon, is neither desirable nor required by the Constitution. As a substitute for the perfect rule, a bright line approach, grounded in common sense application of settled doctrine already exists in the context of the Carroll Doctrine. (Carroll v. United States (1925) 267 U.S. 132.) The Carroll Doctrine strikes an even balance between the competing interests which come to play in every vehicle search situation, specifically: individual privacy, society's interest in effective law enforcement and the officer's right to safety. Accordingly, petitioner submits the vehicle exception created in Carroll and reaffirmed in United States v. Ross (1982) 456 U.S. 798, should be applied to all vehicles, including Mr. Carney's fully operational motor home.

A. The Carroll Doctrine, Based as it is on Inherent Mobility, Presents the Most Reasonable Approach to Vehicle Search Cases

Application of the Carroll Doctrine to vehicle searches, regardless of configuration or subjective use, presents a bright line approach to vehicle search law. Neither respondent nor his amici dispute the ability of law enforcement officers to determine what is and is not an inherently mobile vehicle. Consequently, application of this long standing doctrine to the facts of this case promotes the advantages which accompany clarity and consistency in the law.

Contrary to the cries of respondent, privacy rights play an important part in the Carroll Doctrine. The Carroll Court weighed Mr. Carroll's individual privacy rights against society's legitimate interest in preventing crime

and apprehending criminals and concluded that the exigency created by the car's ability to move overcame Mr. Carroll's privacy interests.

The configuration of the vehicle and its potential use do nothing to diminish the exigency created by inherent mobility and therefore does not serve to exclude certain vehicle configurations from the Carroll Doctrine. This conclusion is provided for in Carroll itself, which equated an automobile with a ship, motor boat and wagon, all of which could serve as temporary or permanent residences. (Carroll v. United States, supra, 267 U.S. at p. 153.) Thus, even vehicles and vessels cloaked with residential potential must yield to the exigency of mobility, just as an automobile and its private compartments must yield.

The Carroll Doctrine is not a perfect solution to the vehicle search issue. However, it is a solution which focuses on the realities of the application of the Fourth Amendment in the real world. Premised on principles announced by this Court, the mobility based vehicle exception provides law enforcement with the guidance necessary to ensure that police officers will fulfill their law enforcement duties without overstepping the bounds of their authority. Limited by probable cause and enforced through the exclusionary rule, the rights of the individual are protected.

Furthermore, the rule is reasonable and fair. Everyone has been placed on notice that their movable vessels may be stopped and searched on probable cause, without the protection afforded by a magistrate's prior evaluation of the

facts. (United States v. Ross, supra, 456 U.S. at p. 806, fn. 8; see, Oliver v. United States, supra, 80 L.Ed.2d at p. 223; Katz v. United States (1967) 389 U.S. 347, 361 (Harlan, J. concurring).)

B. An Approach Which Requires Police to Distinguish Between Vehicle Configurations and to Ascertain Subjective Use is Unworkable and Therefore Unreasonable

Respondent's position contemplates a twofold analysis. First, a police officer must determine if the vehicle he stopped is a motor home or something else. If the vehicle is a motor home, a secondary analysis is required. A motor home stopped "in transit" (i.e., while moving) may be searched without a warrant while a parked motor home is not subject to a warrantless

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search without one of the exigent circumstances which justify the search of a house.[1] (Respondent's Brief on the Merits, pp. 28-41.)

Step one of respondent's analysis is impossible to perform in a consistent manner. (Respondent's Brief on the Merits, p. 40.) What is a "motor home?" What is it about the outward appearance of a vehicle which suggests it is likely to be serving as at least a temporary residence? Is size the determining factor? If so, how big is a motor home? Does it have curtains? How about tinted glass? What happens

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1. Respondent abandons the California Supreme Court's holding in People v. Carney which boldly stated the "automobile exception" is not based on mobility and flatly held the exception could not be applied to a motor home. (People v. Carney, supra, 34 Cal.3d at pp. 605, 610.)

when an officer looks into the backseat of a 1972 Ford LTD or the back of a Dodge pickup truck and sees a rolled out sleeping bag? Has he looked into a motor home? What is it about the LTD or pickup truck that separates them from a 35 foot Pace Arrow so that the latter is entitled to preferential treatment? Where is the line to be drawn between motor home and automobile? What are worthy vehicles and what are unworthy vehicles?

By accepting respondent's position, this Court would sentence police officers to years of hard labor deciphering the constitutional distinction between worthy and unworthy vehicles. Police officers, though trained professionals, are not equipped to distinguish between the subleties of complex constitutional doctrine the way

appellate court judges, lawyers and law professors are equipped. Yet, they would be required to make these subtle distinctions instantaneously, in the context of infinite factual situations.

The task of applying the rule proposed by respondent would challenge a constitutional scholar. However, in the context of the closed container cases, this Court declined the opportunity to distinguish between worthy and unworthy containers because such a distinction would be improper. (Robbins v. California (1981) 453 U.S. 420, 426-427 (plurality); id., at p. 436 (Blackmun, J., dissenting); id., at p. 443 (Rehnquist, J., dissenting); id., at p. 447 (Stevens, J., dissenting).) It is no less improper for police to make a similar evaluation regarding vehicles. The task inflicted on the police is

impossible without clear guidance, and neither respondent nor the California Court provide such guidance.

For obvious reasons criminals do not wish police to be provided with workable guidelines in vehicle search cases. If the constable blunders all the evidence obtained as a result will be lost to the exclusionary rule. It is therefore beneficial to respondent, and all lawbreakers, for police to work at risk when conducting vehicle searches. Respondent notes with relish that the substantive criminal law is "clotted with 'hair-splitting' distinctions" and that police officers are asked to make instantaneous decisions about where to split the hair. (Respondent's Brief on the Merits, p. 39.) Providing another hair-splitting factor does not protect constitutional rights and can only benefit the lawbreaker.

So long as police officers work at risk in conducting warrantless seraches and seizures they must be provided with bright line guidance. Though he or she acts in the best of faith, endeavoring to protect an individual's rights, if the officer makes a mistake, in this area where a mistake could so easily be made, the evidence obtained as a result of that mistake is suppressed and a murderer may go free. Some accomodation to the officers must be made, be it a bright line rule which illuminates the officer's task or some adaption of the exclusionary rule which would require consideration by the courts of the complexity of the officers task and the good faith with which he carries it out. Society is entitled to be protected from criminals.

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Once a vehicle has been identified as a motor home, under respondent's approach it will fall under the vehicle exception if it is "in transit" (i.e., moving), but not if it is parked. (Respondent's Brief on the Merits, pp. 35-36.) He concedes that the considerations which make the securing of a warrant for an automobile impractical (i.e., mobility) operate with equal vigor when a motor home is moving. (Respondent's Brief on the Merits, p. 35.) He is right.

However, respondent is wrong to assume the same factors do not apply when the motor home is parked, yet fully capable of moving. The opportunity to search is fleeting because a vehicle is "readily movable." (Chambers v. Maroney (1970) 399 U.S. 42, 51.) A parked motor home requires only the insertion of a key

into the ignition to be capable of moving into the next jurisdiction. Thus, so long as the motor home retains the objective indicia of mobility it remains readily movable and the reason for the vehicle exception applies.

To differentiate between motor homes because one is moving and one is parked cannot be reconciled with respondent's privacy analysis. For example, a motor home which is parked: at a gas pump, or on the street while the owner buys a loaf of bread, or in a parking lot while the owner is at work, or in countless other situations, is not being used as a residence. These vehicles are in the stream of commerce and are not entitled to treatment different from that accorded a moving motor home or another vehicle in a like situation. These parked motor homes are just as capable

of movement and present an identical danger that they will disappear long before a warrant can be obtained. The owner of these parked motor homes cannot reasonably expect his vehicle will be treated as a residence when he is using it for transportation

The problem is not solved by differentiating between where the motor home is parked. Defining a "worthy" parking spot becomes another hair-splitting task for police with the dangers of inconsistent application inherent in that task. Again, the police are at risk in this treatment of the parking place. Furthermore, regardless of where the vehicle is parked, so long as it retains the ability to move it can disappear at a moments notice.

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Finally, differentiating between moving and parked motor homes does not protect an individual's privacy interests in their motor home. The desire for privacy which stands at the core of respondent's position can be defeated merely by placing the key into the ignition and driving the motor home. The nature of the objects contained in the vehicle remain the same and the desire to keep them secret is the same. Since the objects and the individual's desires remain constant, to afford the motor home different treatment merely because it is parked in one instance and not another is illogical, and must not be the basis for this Court's ruling.

* * * * *

CONCLUSION

The necessity for bright line guidance in vehicle search cases is exemplified by the present facts. Police officers must know the limits of their authority before they encounter a vehicle in order to confidently perform their sworn duties. The People have a right to know the limits of the officer's authority so they may know what to expect and can conform their conduct accordingly. Only by providing workable guidelines can the constitutional guarantee of reasonableness have meaning.

Application of the Carroll Doctrine to all vehicles regardless of their configuration or subjective use provides such guidance and predictability. It is based on the long recognized notion that the ability to move creates a societal need which outweighs one's personal

wishes. Since the rule depends on an objective evaluation of the factors which impact mobility, it is capable of accurate and consistent application in all parts of the country. It is, in a word, reasonable.

Because Mr. Carney's motor home was clearly capable of movement, the existence of probable cause justified the search of his vehicle. Consequently, the judgment of the California Supreme Court should be reversed.

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Respectfully submitted,

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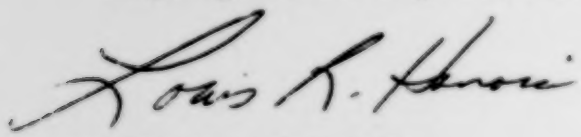

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I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within REPLY BRIEF as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 39 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing three copies in a separate envelope addressed for and to each addressee named as follows:

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Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California on the 22 day of October 1984.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, October 22, 1984.

Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.

Subscribed and sworn to before me
this 22 day of October 1984.

Vida M. Allen
Notary Public in and for said County and State

VIDA M. ALLEN
NOTARY PUBLIC—CALIFORNIA
COUNTY OF SAN DIEGO
My commission expires Aug. 20, 1986